


 **Lusty, John (Vol. 01) - 01/14/2005**

1 CLIP (RUNNING 01:58:34.734)

 **JURY TRIAL - DAY 5 SEPTEMBER 19, 2006**
**LUSTY2 105 SEGMENTS (RUNNING 01:58:34.734)****1. PAGE 5:19 TO 5:23 (RUNNING 00:00:14.900)**

19 Q. In May of 2004 you filed a lawsuit  
 20 against Mack Trucks.  
 21 A. Yes. I think it was May. I'm not  
 22 sure of the date.  
 23 Q. Okay.

**2. PAGE 7:05 TO 9:08 (RUNNING 00:02:28.000)**

05 Q. Okay. And other than you said  
 06 you've never seen the first page, other than  
 07 that, do you recognize this as a copy of the  
 08 complaint that you filed against Mack Trucks in  
 09 May of 2004?  
 10 A. Yes.  
 11 Q. And -- and it was filed by your  
 12 lawyer, Mr. Rex Elliott, whose offices we're in  
 13 today.  
 14 A. Correct.  
 15 Q. Okay. When did you first hire  
 16 Mr. Elliott to represent you for that lawsuit?  
 17 A. I don't have that exact date,  
 18 Jeremy. I don't remember those dates. I mean,  
 19 it was -- I was dismissed on January 15, 14th or  
 20 15th, I believe, the 14th or 15th.  
 21 Q. Okay. Do you remember --  
 22 A. I just don't remember the dates. I  
 23 mean, Rex would have a record of that. I don't.  
 24 Q. Do you remember, do you have any  
 00008:01 ball-park figure of how close -- how close it  
 02 was to this lawsuit that you hired him? Was it  
 03 like a month before, two months before?  
 04 A. I can't remember that, when I met  
 05 with him, I can't, you know, when I talked to  
 06 Rex.  
 07 Q. Okay. Do you -- you remember  
 08 testifying in the termination hearing for Toledo  
 09 Mack?  
 10 A. Yeah.  
 11 Q. Okay. That was February 6, 2004;  
 12 right?  
 13 A. It was October -- repeat that  
 14 question because I'm just -- I'm not thinking  
 15 Toledo here right now.  
 16 Q. I'm talking about the trial or the  
 17 hearing.  
 18 A. Oh, okay, the hearing in Columbus.  
 19 Q. In Columbus, yes.  
 20 A. Was that February? I don't recall  
 21 that, but if it was, I testified at that  
 22 hearing. I don't remember the date of that  
 23 hearing, I don't.  
 24 Q. And by that point were you being

00009:01 represented by Mr. Elliott?  
02 A. It was sometime around there that I  
03 talked to Rex, and I don't have that exact  
04 date. I don't know that.  
05 Q. Would it be fair to say that you  
06 hired Rex to represent you in this lawsuit  
07 against Mack Trucks after that hearing?  
08 A. I think it was after the hearing.

3. PAGE 16:08 TO 17:01 (RUNNING 00:01:40.000)

08 Q. Okay. I'm showing you Exhibit 2.  
09 Do you -- do you recognize this document as your  
10 initial disclosures in the lawsuit that you  
11 filed against Mack Trucks?  
12 A. I think it was called -- yeah, I  
13 did.  
14 Q. Do you recall you reviewed this  
15 document and believe the information in here is  
16 accurate?  
17 A. Yes.  
18 Q. Now, in Items, 5, 6, 7 and 8, you  
19 describe, or Mr. Elliott describes on your  
20 behalf, areas in which Mack's attorneys have  
21 knowledge; is that right?  
22 A. If that's the formal procedure, I  
23 guess yeah. I mean, I'm not aware of a formal  
24 legal procedure, but if this is what it is, I  
00017:01 recognize that I read it, yes.

4. PAGE 17:18 TO 17:19 (RUNNING 00:00:05.600)

18 Q. What did you mean by "lost  
19 compensation due to Mack's illegal practices"?

5. PAGE 18:11 TO 20:23 (RUNNING 00:02:55.300)

11 A. I mean, that's attorney's words, not  
12 mine. I thought, you know, that's a formal  
13 procedure. That's how you plead your case, I  
14 guess, and that's what I -- I took this to be  
15 the formal document in the procedure that you  
16 guys do.  
17 Q. Did you, in fact, understand  
18 yourself to be claiming lost compensation due to  
19 Mack's illegal practices?  
20 A. Well, I wasn't working, so I lost  
21 compensation. I lost compensation, I felt, from  
22 bonuses and incentives that I could have earned.  
23 Q. And what do you mean by the bonuses  
24 and incentives?  
00019:01 A. Well, we were paid on commissions  
02 and incentives, on quotas and objectives and  
03 dealer performance and different criteria. When  
04 I say "dealer performance," dealers, meaning  
05 their objectives added to the aggregate number  
06 against our objectives that were assigned to us  
07 per year.  
08 Q. Okay. And how does that relate to  
09 lost compensation?  
10 A. Well, I did -- if my dealer was not  
11 getting the sales assistance he deserved to make  
12 a deal or to be competitive or to be put on a  
13 level playing field, that would affect his

14 ability to make a deal, to sell trucks and  
15 ultimately meet his quota or objective, which,  
16 in turn, had an effect on my income.

17 Q. Okay. So basically every time you  
18 could prove an illegal practice that affected  
19 one of your dealers, you believe that you were  
20 entitled to lost compensation.

21 A. Well, I never was on a campaign to  
22 prove an illegal practice for a dealer or on any  
23 given specific deal. It's -- we're here today  
24 because somebody filed a lawsuit. I mean,

00020:01 that's -- that's why we're here.

02 Q. But you filed this lawsuit.

03 A. Yes, I did.

04 Q. Okay. And part of the damages you  
05 were claiming were that you felt that -- were  
06 lost compensation in the form of bonuses and  
07 incentives due to what you thought were Mack's  
08 illegal practices; right?

09 A. Yes.

10 Q. Now, as part of these initial  
11 disclosures, you turned over some documents to  
12 Mr. Elliott.

13 A. Yes.

14 Q. Okay. In order -- you understood  
15 that in order to be provided to Mack Trucks.

16 A. Yes.

17 Q. Okay. And did you take any care to  
18 determine whether any of those documents were  
19 attorney-client communications?

20 A. Not any extraordinary care. I mean,  
21 I didn't mark anything "attorney-client  
22 privilege." I mean, I didn't know what would be  
23 attorney-client privilege, so, no.

**6. PAGE 26:10 TO 26:12 (RUNNING 00:00:05.800)**

10 Q. Do you remember turning over a file  
11 called Toledo Mack Legal File Book 1?

12 A. Yes.

**7. PAGE 41:02 TO 41:21 (RUNNING 00:00:46.000)**

02 MR. ELLIOTT: I guess the question  
03 is does he know how Mr. Yeager learned about his  
04 termination.

05 MR. HEEP: That's a good question.

06 A. At one point I told Dave Yeager that  
07 I was terminated.

08 Q. And did you call him immediately  
09 after your termination?

10 A. Probably in a day or so. I can't  
11 remember if it was the same day or within a day  
12 or so.

13 Q. Did you call all you're dealers to  
14 tell them you were terminated?

15 A. No.

16 Q. Why did you choose Mr. Yeager to  
17 call?

18 A. Because I was involved with Dave  
19 Yeager as a dealer, and this was all about him,  
20 and I felt I got terminated because of  
21 testifying truthfully under oath in his case.

8. PAGE 43:07 TO 43:23 (RUNNING 00:00:48.700)

07 Q. Did you, in fact, meet with Rex  
08 Elliott on 1-23-04 to discuss your testimony for  
09 Toledo Mack?  
10 A. I met with Rex, but was it the  
11 23rd? I don't know. I don't have notes of  
12 that, I mean, it could -- if he's got in notes  
13 that I met with him, then I must have met with  
14 him on that day. I'm just not recalling the  
15 dates, Jeremy; that's all.  
16 Q. Somewhere within a week or so after  
17 your termination you met with him.  
18 A. Yeah. I called him, and I met with  
19 him shortly after that. I -- whether it was the  
20 23rd, I know that a couple days had passed, and  
21 I was just coming out of the shock, and, you  
22 know, there's some things you go through  
23 emotionally, and -- go ahead.

9. PAGE 44:04 TO 45:01 (RUNNING 00:00:44.600)

04 Q. Okay. Was there a time when you  
05 first called Mr. Elliott, as you just testified.  
06 A. Yeah.  
07 Q. Okay. And when was that?  
08 A. It was after -- it was shortly  
09 after. I mean, it could have been a week or two  
10 weeks, I'm not sure. It was shortly -- it was  
11 within a month of when I was canned. I mean, it  
12 was sometime after that. I -- I didn't keep a  
13 log of my calls to Rex.  
14 Q. And then sometime around January 23  
15 you actually met with him in person; right?  
16 A. I came down here, and I would say,  
17 the 14th, a week or two maybe.  
18 Q. You drove here?  
19 A. Yeah.  
20 Q. How far of a drive is it?  
21 A. 130, 140 miles, something like that,  
22 yes.  
23 Q. Three hours?  
24 A. No. It's two and a half, well, two,  
00045:01 two to three, I guess, depending on traffic.

10. PAGE 45:08 TO 48:08 (RUNNING 00:03:33.900)

08 Q. Do you remember how long your  
09 meeting is -- was with Rex?  
10 A. It wasn't a whole long one, I don't  
11 believe. I don't know. Jeremy, I'd tell you  
12 the truth if I knew it, but I don't remember how  
13 long it was.  
14 MR. ELLIOTT: Well, I just want to  
15 make sure the record is clear, too, because you  
16 haven't asked the questions, but the -- your  
17 assumption in these questions is that it was one  
18 on one, Mr. Lusty and myself, and that would be  
19 an inaccurate portrayal of that meeting.  
20 Q. Okay. Who else was at the meeting?  
21 A. I met Chip that day. I think David  
22 popped his head in, if I'm not mistaken, or  
23 maybe David was here.  
24 Q. David Brown?

00046:01 A. And Chip. David Brown, and I think  
 02 Chip popped in. I met Lori and Tammy, and I  
 03 don't think there was anyone else here.  
 04 Q. Mr. Yeager wasn't here?  
 05 A. I don't believe he was that day.  
 06 Q. If you don't remember.  
 07 MR. ELLIOTT: If you don't remember,  
 08 just --  
 09 A. I don't remember whether he was or  
 10 he wasn't. I know I met those guys.  
 11 Q. Okay. Now, we've established there  
 12 were more people. How long did you spend in  
 13 sort of sum total with all of these folks?  
 14 A. I don't think that was a long  
 15 meeting. I can't -- I can't -- I can't tell  
 16 you.  
 17 Q. Did you take any notes?  
 18 A. No.  
 19 Q. What did you discuss?  
 20 A. That I had been terminated with Mack  
 21 Trucks and that I felt I was wrongfully  
 22 terminated, and I wanted to talk about what my  
 23 options were.  
 24 Q. Did you discuss the testimony you  
 00047:01 were going to be giving in the Toledo Mack  
 02 termination hearing in Columbus?  
 03 A. No. That was when I came here for  
 04 -- Jeremy, I don't remember what took place the  
 05 day I came here to talk to Rex about my  
 06 termination. If I could remember it, I'd tell  
 07 you what I remember, but I don't.  
 08 Q. Did you -- do you remember at any  
 09 time talking to Rex about the testimony you  
 10 would have been giving in the Toledo Mack  
 11 termination hearing?  
 12 A. We talked about that somewhat along  
 13 the line, and, yeah. I mean, I don't remember  
 14 the details of that; I don't.  
 15 Q. Do you remember how many times you  
 16 talked to him about the testimony you would  
 17 give?  
 18 A. No. I'm sure I talked to him a  
 19 couple of times, but I don't remember the exact  
 20 number.  
 21 Q. Were the other times in person or by  
 22 phone?  
 23 A. I was here another time, and I may  
 24 have had some phone calls with Rex.  
 00048:01 Q. Did you review documents that you  
 02 would testify about?  
 03 A. I don't know when I gave Rex my  
 04 documents. I'm not sure what I had. I just --  
 05 I can't remember. I'm trying to separate who,  
 06 what, why, when, and where, and what I did, and  
 07 I just don't remember all of those meetings,  
 08 Jeremy.

11. PAGE 50:11 TO 53:04 (RUNNING 00:03:05.900)

11 Q. In the time between when you were  
 12 dismissed from Mack Trucks and the time you  
 13 testified in February of 2004, did you talk to

14 Mr. Yeager by telephone about the testimony that  
15 you were going to give in the hearing?

16 A. Dave called me a couple times. I  
17 don't think we discussed testimony. Dave and I  
18 talked about a lot of things, but I -- I mean,  
19 that was -- Dave was very tight-lipped, close to  
20 the vest about his personal involvement in all  
21 of this.

22 Dave was here one day, but I can't  
23 remember -- I mean, we talked about a lot of  
24 things, but what we talked about -- Jeremy, I'm  
00051:01 not trying to avoid the question or answering  
02 the question. I just don't recall. I mean,  
03 it's just been a ton of stuff, you know, that  
04 was talked about over the last two years, three  
05 years. That's all.

06 Q. Can you remember a single thing that  
07 you talked about between the time -- with  
08 Mr. Yeager between the time that you were  
09 terminated from Mack Trucks and the time you  
10 testified in the termination hearing?

11 A. Yeah. I talked about my emotions on  
12 many times, many occasions. It was an emotional  
13 event for me.

14 Q. What do you remember saying to him?

15 A. I'm sorry?

16 Q. What do you remember saying to him?

17 A. "I just can't believe this" and,  
18 "Yeah, it's troubling." I was concerned, and,  
19 you know, that it wouldn't change what I did and  
20 what I had to do. You know, I told the truth,  
21 and that's just the way it is. I'll live with  
22 that.

23 Q. When you say it wouldn't change what  
24 you had to do, what did you mean by that?

00052:01 A. Well, it didn't change what I had to  
02 do. I'm sorry I used that word "what I did."  
03 By telling the truth, you know, I wouldn't  
04 change what had happened. I'm not going to  
05 compromise that.

06 Q. Do you remember telling him anything  
07 else?

08 A. No. He felt bad that was I canned,  
09 and I was just -- that was -- you know, he took  
10 that to heart.

11 Q. Do you remember --

12 A. Go ahead.

13 Q. Do you remember what he said?

14 A. "Oh, I'm really sorry," or something  
15 like that. I -- not the exact words.

16 Q. And just to be clear, you have no  
17 recollection at all during that time period that  
18 we're discussing of talking about what -- the  
19 testimony that you would be giving in the -- in  
20 the termination hearing.

21 A. We talked about that here, and I was  
22 involved in the termination of myself and the  
23 upcoming deposition or the upcoming hearing, and  
24 I just -- it's just running together, Jeremy,  
00053:01 you know, what we talked about. We talk about a  
02 lot of things, but, I mean, it was just  
03 questions like you're asking me, but I can't

04 remember the exact questions.

12. PAGE 54:20 TO 57:02 (RUNNING 00:03:30.500)

20 Q. (By Mr. Heep) Okay. The question  
21 is, do you recall whether you gave materials  
22 directly to Mr. Brown or anyone at Cooper &  
23 Elliott.

24 MR. ELLIOTT: Prior to --

00055:01 Q. Up until this date here, January 25,  
02 '04.

03 A. I don't recall that I gave them my  
04 stuff at that time. I talked to David, and I'm  
05 not saying that I talked to him because I'm  
06 reading it here. David was here. It was David  
07 that was here, and Chip popped his head in, and  
08 I remember talking to Dave, and we went over  
09 some -- whatever documents, and I can't remember  
10 what they were.

11 Q. Prior to the termination hearing  
12 that you testified at in February, had you ever  
13 talked to Manly Parks or anyone at his firm?

14 MR. ELLIOTT: You mean outside of  
15 counsel for Mack, because obviously we were in  
16 deposition together on at least one occasion  
17 prior to that time.

18 Q. Outside of depositions.

19 A. I believe I spoke to Manly once.

20 Q. And when -- when was that?

21 A. Sometime in that time frame,  
22 Jeremy. I don't have a date. I don't know.

23 Q. Do you -- do you remember what you  
24 talked about?

00056:01 A. I don't.

02 Q. Do you remember any other  
03 discussions that you've ever had at any time  
04 with Mr. Parks or anyone at the Duane Morris law  
05 firm?

06 A. I talked to a secretary once that I  
07 can't remember her name. Other than that, yeah,  
08 there was some other guy, and I can't remember  
09 -- only -- I can't remember his name, but there  
10 was another attorney. I assume he was an  
11 attorney; maybe he wasn't. Maybe he worked in  
12 the office. I have no idea.

13 I filed an affidavit and somebody  
14 called me about something on that, and I can't  
15 remember what he talked about, but it was --

16 Q. You don't remember who it was?

17 A. No. He didn't -- I don't know if  
18 his name was on the affidavit. I'm not sure. I  
19 -- I spoke to your secretary, and I wouldn't  
20 remember her name.

21 Q. Mr. Elliott's June billing records  
22 reflect -- which I haven't showed you yet --  
23 reflect "conference with Mr. Yeager, Mr. Lusty  
24 and Mr. Parks" in June of '04. Do you remember  
00057:01 meeting with Mr. Parks in June of '04?

02 A. Yes.

13. PAGE 57:06 TO 57:15 (RUNNING 00:00:28.500)

06 A. Yes.



07 Q. And what was that about?  
 08 A. I -- I guess questioning. I can't  
 09 remember what -- what was taking place after  
 10 June. Was there an upcoming event? I don't  
 11 recall. I don't have a list of when the  
 12 termination hearing was and those dates. I  
 13 don't have those in my mind, Jeremy, but it was  
 14 about the Toledo case, I'm sure, about the  
 15 Toledo information.

14. PAGE 61:17 TO 63:05 (RUNNING 00:02:13.700)

17 Q. Did you understand Mack to have a  
 18 plan to eliminate small dealers?

19 A. I understood Mack had a Network 2000  
 20 that was -- I think was designed as a strategy  
 21 to consolidate dealers in markets, and -- yeah.  
 22 Yes.

23 Q. Have you ever told any Mack dealer  
 24 or employee of a Mack dealer that Mack has a  
 00062:01 plan to eliminate small dealers?

02 A. I -- I discussed the Mack Network  
 03 2000 with dealers because we were instructed to  
 04 do so. As a matter of fact, I was told that I  
 05 needed to get Network 2000 moving in my district  
 06 by Jeff Yelles, and I was told by Jeff Yelles  
 07 that certain dealers had to go.

08 Q. Did you ever specifically tell any  
 09 Mack dealer or employee of a Mack dealer that  
 10 Mack had a plan to eliminate small dealers?

11 A. I discussed Network 2000. I never  
 12 -- I never come out and said: Mack's going to  
 13 get rid of you because you're a small dealer. I  
 14 can never remember saying that. That isn't  
 15 something I would have said.

16 Q. Have you ever told any Mack dealer  
 17 that you thought Mack's practices were wrong or  
 18 unfair?

19 A. I may have said that in some sales  
 20 assistance dealings, "it's unfair, I couldn't  
 21 get you an answer," something like that, but  
 22 never went and broadcast that Mack Trucks was  
 23 unfair in their pricing policies or sales  
 24 assistance policies.

00063:01 Answering a dealer's objection, it's  
 02 unfair or unfortunate that I can't get you an  
 03 answer, and most of them, a lot of those dealers  
 04 brought that to my attention rather than me  
 05 bringing it to their attention.

15. PAGE 64:15 TO 66:08 (RUNNING 00:01:44.800)

15 Q. Whether we use the word "unfair" or  
 16 "unfortunate," were there any other dealers,  
 17 other than Flag City, who you told that Mack's  
 18 practices were either unfair or unfortunate?

19 A. In response to their question, I  
 20 would say it was unfortunate. They would insist  
 21 it was unfair. They needed a response, and I  
 22 would say: Yeah, it is, but I'll get you a  
 23 response. And that's -- I didn't go there and  
 24 say: Mack is unfair in their pricing policies  
 00065:01 and that's why you don't have an answer. That



02 is not what I said.  
 03 I think there's a play on words  
 04 here, and I'm not buying into that. That isn't  
 05 what I said. I defended Mack's position that we  
 06 have a cross-check procedure and followed it,  
 07 and it didn't work.

08 Dan Ralich from Youngstown  
 09 complained. Dan Ralich from Akron complained.  
 10 Dave Hubbard complained. Tim Watson complained  
 11 from Northern Ohio Truck Center. Jim Hoffman on  
 12 occasions called Jeff Yelles and complained.  
 13 The guy from Buffalo, the salespeople there, a  
 14 lot of salespeople complained because it was  
 15 they had customers hanging that wanted to buy  
 16 trucks, and they didn't get responses or what  
 17 they thought they needed.

18 Q. And for each of the -- for the two  
 19 Dan Raliches, Tim Watson, Jim Hoffman and  
 20 Buffalo Mack, did you tell all of them or at  
 21 least agree with them that you thought Mack's  
 22 practices were unfair or unfortunate?

23 A. No; that's not the case. I would  
 24 always defend the situation that: I'm trying to  
 00066:01 get an answer. I did what I needed to do. It's  
 02 at this level. It's at that position in the  
 03 system. I forwarded it to the region or I  
 04 forwarded a cross-check. We don't have a  
 05 response yet.

06 But there were some people that  
 07 complained, and I -- I couldn't disagree that  
 08 the response time was terrible in many cases.

**16. PAGE 144:23 TO 145:14 (RUNNING 00:00:37.200)**

23 Q. Would you agree with me that Wiegand  
 24 primarily tried to sell trucks inside Michigan?

00145:01 A. Yeah, I think that's true.

02 Q. And do other dealers sell into  
 03 Wiegand's AOR in your experience?

04 A. Yes.

05 Q. Okay.

06 A. They attempt to sell in Wiegand's  
 07 AOR. Are they successful? I don't track every  
 08 deal to the end, so I don't know.

09 Q. Okay. But you know that at least  
 10 some do successfully sometimes.

11 A. Yeah.

12 Q. Okay. And would you say that it's  
 13 fairly frequent that other dealers sell into  
 14 Wiegand's AOR?

**17. PAGE 145:16 TO 146:13 (RUNNING 00:00:48.000)**

16 A. Well, when D & H sold Mack trucks, I  
 17 mean, due to the close proximity, they were --  
 18 they were always going back and forth to each  
 19 other's territory. Dermody may have sold some  
 20 trucks -- well, Dermody did sell some trucks  
 21 over there, and Wiegand also sold some trucks  
 22 over there, and Cecil Warren once in a while  
 23 would get involved in that, so, yeah.

24 Q. Okay. Can you think of, do you know  
 00146:01 any other dealers that would do that, that you

02 know of? Like Mr. Elliott would tell you, we  
03 don't want you to guess, just what you can  
04 remember.

05 A. Off the top of my head, no.

06 Q. And in your experience, other  
07 dealers sell into Toledo Mack's AOR as well.

08 A. Yes.

09 Q. Okay. And in your experience Toledo  
10 Mack also regularly sold outside of its AOR.

11 A. Yes.

12 Q. In fact, many dealers frequently  
13 sell outside of their AORs; right?

**18. PAGE 146:15 TO 146:23 (RUNNING 00:00:15.000)**

15 A. Yeah.

16 Q. And that creates some tension  
17 between dealers sometimes.

18 A. Sure.

19 Q. Okay.

20 A. Yes.

21 Q. And also created some tension within  
22 the Mack organization sometimes.

23 A. Yes.

**19. PAGE 149:02 TO 149:04 (RUNNING 00:00:15.600)**

02 Q. Okay. And a -- and did you agree  
03 that the competition from Kenworth, Peterbilt  
04 and other OEMs was fierce?

**20. PAGE 149:06 TO 151:08 (RUNNING 00:01:45.400)**

06 Q. In the vocational business.

07 A. "Fierce" is a word we use when we  
08 submitted for sales assistance so that someone  
09 in Allentown would wake somebody up and realize  
10 that we needed some more money to make this  
11 deal, so.

12 But was it fierce? Mack Trucks was  
13 reporting it was going to be a blood bath  
14 because everyone was vying for market share --

15 Q. Uh-huh.

16 A. -- and they were -- it was going to  
17 be fierce that year, so I guess I would  
18 reiterate what they said, it was going to be  
19 fierce.

20 Q. You agree with that, it was going to  
21 be fierce and there was a blood bath that was  
22 coming in terms of competition.

23 A. I thought it would be a competitive  
24 year. I mean, everyone wanted market share,  
00150:01 and, you know, they wanted to knock Mack out of  
02 the box.

03 Q. Okay.

04 A. And this was in 1 of '97. I got to  
05 believe -- I can't remember when I started in  
06 that region, so I may not have had a real good  
07 handle on it, but, I mean, they were telling us  
08 that's what was going to happen, but -- you  
09 know, I believe that every day of my life in  
10 that district was fierce.

11 Q. And up until the time you left in  
12 2004, competition from other OEMs was fierce.

13 A. Every deal is fierce, Jeremy,  
 14 honestly, yeah. I mean, yeah.  
 15 Q. And -- and including both in  
 16 vocational and open-road trucks.  
 17 A. Yes.  
 18 Q. Okay. Now, at the bottom of the  
 19 page you say, "must continue to push dealer  
 20 sales reps to get on this business and stay on  
 21 top of it."  
 22 A. Where?  
 23 Q. The bottom of the first page.  
 24 A. Okay.  
 00151:01 Q. Do you see that?  
 02 A. "Must continue." We were told that  
 03 we had to get our dealers sales rep on the  
 04 business and out there selling trucks.  
 05 Q. And you agreed with that.  
 06 A. That's what sales is all about; you  
 07 have to be in front of the customer. You have  
 08 to contact customers.

**21. PAGE 152:22 TO 153:16 (RUNNING 00:00:55.200)**

22 Q. Okay. I'm showing you Exhibit 13,  
 23 and it -- is this another one of those monthly  
 24 reports, this time dated March 1997?  
 00153:01 A. Yes.  
 02 Q. And just focusing you under  
 03 Competitive Activities, that second box, you  
 04 say, "price..price..price is a major obstacle in  
 05 securing new business."  
 06 A. Yes.  
 07 Q. And then you go on through that  
 08 paragraph and talk about focusing on Ford  
 09 accounts and what other manufacturers were  
 10 doing. "Pete, Kenworth aggressively pursuing  
 11 Mack vocational business." Were those -- were  
 12 Ford, Pete, Kenworth, were they meaningful price  
 13 competition to Mack products?  
 14 A. Yes.  
 15 Q. And, again, that continued up until  
 16 the end of your tenure at Mack Trucks.

**22. PAGE 153:20 TO 154:02 (RUNNING 00:00:14.200)**

20 Q. Okay. With the exception of Ford  
 21 not being there at the end of your tenure.  
 22 A. Pete and Kenworth were competitors,  
 23 yes.  
 24 Q. And were -- and continued to be  
 00154:01 significant price competition until that time.  
 02 A. Yes.

**23. PAGE 156:23 TO 157:03 (RUNNING 00:00:13.400)**

23 Q. And you understand that happens  
 24 sometimes, that a customer will choose one  
 00157:01 product over another, even though it's more  
 02 expensive than the other product.  
 03 A. Yes.

**24. PAGE 158:08 TO 159:01 (RUNNING 00:00:36.767)**

08 Q. (By Mr. Heep) All right. Why don't  
 09 we start with this example, okay, this, you

10 know, Kenworth/Freightliner, and we'll take the  
 11 example of there -- there being two different  
 12 products involved. Okay, one is Kenworth; one's  
 13 Freightliner.

14 A. Uh-huh.

15 Q. And there -- and they're different  
 16 prices. And here it looks like they're a little  
 17 bit close. The customer here actually decided,  
 18 according to this letter -- we don't know what  
 19 actually happened -- but according to this  
 20 letter the customer -- looks like the customer  
 21 decided to buy the more expensive truck.

22 And I'm just asking, based on your  
 23 experience, what are the kinds of things that a  
 24 customer thinks about in making a purchase like  
 00159:01 this?

**25. PAGE 159:05 TO 160:19 (RUNNING 00:01:48.600)**

05 A. Color of the truck, specs. I mean,  
 06 in trucks that -- the color can be an issue;  
 07 interior package, but that goes along with  
 08 specifications. That covers a waterfront of  
 09 things; availability; the perception in the  
 10 marketplace of maybe quality.

11 Q. Can you think of anything else?

12 A. I don't know what's going to go  
 13 through every customer, buyers, but, I mean,  
 14 those are the ones that come off the top of my  
 15 head.

16 Q. Okay. Maybe the reputation of the  
 17 product, would that be one?

18 A. Perception in the marketplace,  
 19 that's what I meant.

20 Q. Okay. How about reputation of the  
 21 dealer itself?

22 A. Possibly.

23 Q. Okay. How about the proximity of  
 24 the dealer to the customer?

00160:01 A. Possibly.

02 Q. You say "possibly," but we don't  
 03 know --

04 A. It could. It's up to the individual  
 05 buyer, but to me, I'm a price buyer and I buy --  
 06 I purchased cars when I traveled. I mean, I'm  
 07 not a loyal dealer guy, you know, that I deal  
 08 with one specific dealer in my own preference,  
 09 or a Sears, Kaufman's, Gimbel's --

10 Q. Right.

11 A. -- Horn's, I mean, that's not it.

12 Q. That's how you are.

13 A. Right.

14 Q. But in your experience, customers,  
 15 one customer, might say: I want to buy from the  
 16 guy down the street; and another guy might say:  
 17 I want to buy on price. Another guy might say:  
 18 I want to buy Freightliner over Kenworth because  
 19 of the quality. Is that right?

**26. PAGE 160:21 TO 161:01 (RUNNING 00:00:07.000)**

21 Q. Okay. And it could be a matter of  
 22 relationship, couldn't it?

23 MR. PARKS: What could be?  
 24 MR. HEEP: The decision which truck  
 00161:01 to buy.

**27. PAGE 161:03 TO 161:08 (RUNNING 00:00:10.900)**

03 A. I guess yes.  
 04 Q. I mean, if you have a history, a  
 05 long history, of dealing with one, you might  
 06 just like that dealer and the customer service  
 07 that they've provided.  
 08 A. That could be part of it.

**28. PAGE 168:21 TO 169:01 (RUNNING 00:00:07.900)**

21 questions each in turn then. The perception of  
 22 reliability in the marketplace is often, in your  
 23 experience, an important criteria for  
 24 customers.  
 00169:01 A. I wouldn't say often.

**29. PAGE 169:03 TO 170:14 (RUNNING 00:01:13.800)**

03 A. I'd say it could be.  
 04 Q. And -- and the product's reputation  
 05 in the marketplace is also often an important  
 06 criteria to a purchaser; isn't it?  
 07 MR. PARKS: Objection to "also." He  
 08 just said to your last question, "no, not  
 09 often," and then you put "also" in your next  
 10 question.  
 11 Q. Okay. Taking the word "also" out,  
 12 that reputation of the product in the  
 13 marketplace, in your experience, is a very  
 14 important criteria, isn't it?  
 15 A. It's possible.  
 16 Q. You say it's possible, but isn't it,  
 17 in your experience, isn't the reputation of the  
 18 product important?  
 19 A. It's always important to me.  
 20 Q. But isn't it -- in your experience  
 21 isn't it important? Haven't you understood it  
 22 to be important to customers?  
 23 A. If it was -- if it was -- Mack  
 24 Trucks has suffered severe product problems  
 00170:01 through the years, and some of those customers  
 02 stuck with them, and they didn't speak very  
 03 highly of them. So I can't -- I can't answer  
 04 that.  
 05 Q. You can't answer. Sometimes --  
 06 sometimes they might stick with a particular  
 07 brand because they like that brand, and  
 08 sometimes they might dump it because they think  
 09 quality's gone bad; is that right?  
 10 A. It's possible.  
 11 Q. Okay. And then Manly also mentioned  
 12 the reputation of the dealer. Is -- in your  
 13 experience is the reputation of a dealer an  
 14 important factor to customers?

**30. PAGE 170:16 TO 173:02 (RUNNING 00:02:17.800)**

16 A. It's possible.  
 17 Q. And in your experience, is the -- is  
 18 the proximity of the dealer to the customer, to

19 use your words, possibly or sometimes an  
 20 important criteria to a purchaser?  
 21 A. Could be a factor.  
 22 Q. Okay. So amongst all the factors --  
 23 and you also mentioned price. Amongst all those  
 24 factors, the only way you can know why a  
 00171:01 customer has bought a truck from a particular  
 02 dealer is by asking that customer, isn't it?  
 03 A. Possibly. I mean, I'm not sure.  
 04 There's probably market surveys out there. I  
 05 can't answer that, Jeremy. I mean, you're  
 06 asking me something that -- I didn't sell the  
 07 trucks, so I don't know. If you think you have  
 08 to ask the customer that question, then I guess  
 09 you do, but I'm not saying that. I don't know  
 10 that.  
 11 Q. But of all these factors, without  
 12 asking the customer, you don't know whether they  
 13 purchased because of price, reputation,  
 14 proximity, availability, product or anything  
 15 else; right?  
 16 A. I -- I wouldn't know that, whether  
 17 you talk to the dealer or the customer. The  
 18 dealer might even know why he did it, not  
 19 necessarily me.  
 20 Q. Well, how would the dealer know?  
 21 A. Well, he would have -- he would have  
 22 a relationship or structured a deal or something  
 23 with the customer.  
 24 Q. He would know because the customer  
 00172:01 would tell him; right?  
 02 A. The customer or the guy in the shop  
 03 or somebody, I mean, yeah. I mean, if he had  
 04 communications with somebody, who that is or  
 05 what they said, I don't know that.  
 06 Q. Well, even if it's a guy in the  
 07 shop, he's going to get that information from  
 08 the customer. I mean, ultimately you got to ask  
 09 the customer, right, why did he buy the truck.  
 10 A. Yeah.  
 11 Q. Okay. And if a dealer doesn't sell  
 12 a truck, if you wanted to figure out why the  
 13 dealer didn't sell the truck, you'd have to ask  
 14 the customer, wouldn't you, why he didn't buy it  
 15 from that particular dealer?  
 16 A. If the dealer wanted to know that, I  
 17 mean, he's not going to ask me why he didn't buy  
 18 it, so he'd have to talk to his customer or  
 19 whoever.  
 20 Q. He'd have to talk to -- if he wanted  
 21 to know whether the reason was any of those  
 22 reasons, whether it was color, specs,  
 23 availability, perception of reliability,  
 24 perception of product, perception of the dealer,  
 00173:01 proximity or price, I mean, you would have to  
 02 ask the customer, wouldn't you?

31. PAGE 173:04 TO 173:06 (RUNNING 00:00:06.200)

04 A. You have to ask the buyer or -- I'm  
 05 not in the head of every customer, obviously. I  
 06 don't know that.

32. PAGE 202:05 TO 202:18 (RUNNING 00:00:58.000)

05 Q. I am showing you Exhibit 15.  
 06 MR. PARKS: 16.  
 07 Q. Excuse me. I am showing you Exhibit  
 08 16.  
 09 A. Uh-huh.  
 10 Q. Without going into any detail at  
 11 this point, would you just page through this and  
 12 identify these documents, all but the last two  
 13 pages, as your handwriting in addition to, you  
 14 know, whatever is typed. I understand the typed  
 15 portions are not your handwriting.  
 16 A. Yeah, page 1, page 2 is mine. Yeah,  
 17 page 3, page 4. Let me see, back up. Page 4,  
 18 5, yeah.

33. PAGE 308:09 TO 308:15 (RUNNING 00:00:47.200)

09 Q. Showing you Exhibit 25, do you  
 10 recognize this document?  
 11 Try to move it along. Do you  
 12 recognize this as the affidavit or declaration  
 13 that you submitted in the antitrust litigation  
 14 in Pennsylvania on May 7, 2004?  
 15 A. Yes.

34. PAGE 313:08 TO 317:14 (RUNNING 00:05:03.200)

08 Q. Well, did you ever talk to Manly  
 09 before you were terminated from Mack Trucks?  
 10 A. I don't think I did.  
 11 Q. Okay. Or anyone from Duane Morris  
 12 or from Cooper & Elliott?  
 13 A. No.  
 14 Q. And we're excluding depositions;  
 15 right?  
 16 A. Yeah.  
 17 Q. Okay. So the one or two times  
 18 since that, since your employment with Mack  
 19 Trucks --  
 20 A. Yes.  
 21 Q. -- what did you discuss with Manly?  
 22 A. I can't remember all the -- I've  
 23 been through so much, I can't remember it. I  
 24 just don't recall it.  
 00314:01 Q. Were they in person or by phone?  
 02 A. I'm sorry?  
 03 Q. In person or by phone?  
 04 A. I don't know if he was here or not.  
 05 I was here talking to Rex, and I can't recall if  
 06 Manly was there or if it was by phone. I just  
 07 don't recall that, and I mean I --  
 08 Q. How long did each -- how long did  
 09 each meeting with Manly last?  
 10 A. I didn't log the time so I don't  
 11 know. I can't remember. I mean, it's -- I  
 12 didn't take notes, and I didn't log it.  
 13 Q. Other than those meetings with --  
 14 those one or two meetings with Manly, have you  
 15 ever met with anyone else at the Duane Morris  
 16 law firm at any time?  
 17 A. No.  
 18 Q. Okay. And so did you at any time



19 mark up or make corrections to this declaration  
20 before it became finalized?

21 A. I don't -- I don't recall that. I  
22 think I read it. I don't think I did.

23 Q. You just read it and said everything  
24 looks okay and you signed it.

00315:01 A. Jeremy, I don't even remember  
02 reading it now. I mean, I did. I had it. I  
03 faxed it back, but I just don't even remember  
04 reading it. I mean, I did read it. I -- I  
05 don't have a copy. If you have a copy of  
06 something, I mean, I don't have a copy of it.  
07 So I may have a copy of the final  
08 thing, but I don't recall making corrections,  
09 and maybe that's when I talked to whatever his  
10 name was. I wish I could remember his name, but  
11 I don't recall guy's name.

12 Q. Did -- did you --

13 A. I don't even know if he was an  
14 attorney. I mean, he may have been a clerk. I  
15 don't know that.

16 Q. Did you -- did you get your version  
17 of this by e-mail or fax or some other way?

18 A. Version of this? By, I believe it  
19 was, fax. Jeremy, I just can't recall.

20 Q. Do you have any -- any version of  
21 this on your computer?

22 A. No.

23 Q. And have you kept in your files any  
24 previous version of this?

00316:01 A. No. I have, I believe, this copy  
02 somewhere.

03 Q. Okay. Let's turn to page 2. You  
04 say under point 4, "In my experience, the  
05 following has been true about the Class 8 truck  
06 industry: (a) The single biggest difference in  
07 Mack trucks of the same model is the model  
08 year."

09 A. I believe that to be true. It's the  
10 same model, same specs. It's the model year.

11 Q. Right.

12 A. Discounting color or something like  
13 that.

14 Q. You would -- you would agree with me  
15 that you really couldn't compare a -- when we're  
16 talking about pricing trucks, you couldn't --  
17 you couldn't compare a model year '04 with a  
18 model year '05.

19 A. No, that's not necessarily true. It  
20 depends on the price code. We have had '05  
21 model years that were at '04 price level.

22 Q. Uh-huh.

23 A. I'm using those as an example.

24 Q. Sure.

00317:01 A. We had an '03 that if -- once in a  
02 while there would have been a window where we  
03 need an order, and the dealers can order an '02,  
04 an '02 model year truck at -- or '03 model year  
05 at the last '02 price level.

06 Q. Uh-huh. So sometimes -- so  
07 sometimes you're able to order a new model year  
08 at the old model year price level and sometimes

09 you're not.  
 10 A. That's fair.  
 11 Q. Okay. And as a general matter, you  
 12 would expect -- you would understand a customer  
 13 to expect to pay a little bit more for a newer  
 14 model year than an older model year.

35. PAGE 317:16 TO 319:14 (RUNNING 00:01:44.900)

16 A. You would expect the customer to pay  
 17 more for a newer model year?  
 18 Q. You understand the customer to  
 19 expect to pay a little bit more for a newer  
 20 model year, like an '05 than an older model year  
 21 than an '04, just as a general matter.  
 22 A. That -- that might be what we  
 23 expect. The customers don't always expect that.  
 24 Q. Okay. Sometimes they might;  
 00318:01 sometimes they might not.  
 02 A. It's a possibility.  
 03 Q. Sometimes they'll try to get the  
 04 same price for a newer model year.  
 05 A. Right.  
 06 Q. Now, you mentioned price -- price  
 07 books or price codes.  
 08 A. Uh-huh.  
 09 Q. In any one year there might be three  
 10 or four price books; is that right?  
 11 A. Price codes, there could be price  
 12 increases. You know, there could be '05A, '05B,  
 13 '05C. That could happen.  
 14 Q. Okay. So, for example, from B to C  
 15 there might be a price increase.  
 16 A. Could be. And it might be a spec  
 17 change.  
 18 Q. Or a spec change. And the spec  
 19 change, I take it, could cause the price  
 20 increase; right?  
 21 A. Or a decrease.  
 22 Q. Or a decrease if this spec change  
 23 made it a less expensive --  
 24 A. Well, I'm not trying to be wise.  
 00319:01 That's true; it can be a decrease.  
 02 Q. Sure. No, I -- I understand.  
 03 If -- let's suppose there weren't a  
 04 spec change, but there's a price increase from  
 05 book B to book C.  
 06 A. Uh-huh.  
 07 Q. And one dealer quotes before the  
 08 price change under book B and the second dealer  
 09 quotes under book C, okay action but the trucks  
 10 are otherwise the same.  
 11 Do you agree with me in order to  
 12 equalize them on sales assistance, you would  
 13 have to give them different percentages of  
 14 discount?

36. PAGE 319:16 TO 321:04 (RUNNING 00:01:43.100)

16 A. That's a possibility, I guess. I  
 17 mean, probably, Jeremy, but, I mean, you're  
 18 asking me a hypothetical situation. I -- I --  
 19 Q. Not really. It's not just a

20 possibility. It's the truth; right? If you  
 21 wanted to equalize your prices from B to C and  
 22 it was otherwise the same truck but was a higher  
 23 price book, then you would have to give  
 24 different amounts of sales assistance, wouldn't  
 00320:01 you?

02 A. Right. I agree with that.

03 Q. Okay. Now, in 4(b) you say, "Most  
 04 alterations to Mack trucks to meet customer  
 05 specifications are generally minor."

06 Now, but a minute ago you mentioned  
 07 there might be spec changes that affect price;  
 08 right?

09 A. Uh-huh.

10 Q. Okay. So sometimes a spec change is  
 11 going to cause the vehicle to be more expensive,  
 12 and then as you pointed out to me, it might  
 13 actually cause it to be less expensive; right?

14 A. Correct.

15 Q. And are those -- are those kind of  
 16 spec changes that you're -- that are causing a  
 17 difference in price, are you calling those  
 18 minor?

19 A. Yeah. I mean, first of all,  
 20 especially if it's on a factory order truck,  
 21 they're minor. I mean, it's a matter of a minor  
 22 change in the computer. Even a transmission  
 23 change after the fact is really a minor change.  
 24 A wheel base change is a minor change. Dealers

00321:01 do it every day.

02 Q. Okay. So you're calling them minor  
 03 changes, but they -- but they will or can often  
 04 impact the final selling price; right?

**37. PAGE 321:08 TO 324:15 (RUNNING 00:03:00.300)**

08 A. Yeah, it can.

09 Q. Okay. And would -- and you're  
 10 calling an engine change a minor change?

11 A. I didn't say that.

12 Q. Oh, okay. Would you agree that an  
 13 engine change, a change in engine is not a minor  
 14 change?

15 A. If you're going to do it after the  
 16 truck is built, it's different. That requires  
 17 removing the hood, pulling the engine out,  
 18 blocking the engine out. There's some  
 19 electronics involved in that, but that would be  
 20 more than minor as compared to a transmission  
 21 change, I believe.

22 Q. Okay. And then I guess especially  
 23 with EPA '02 engines.

24 A. Well, there are some things you're  
 00322:01 restricted you probably couldn't do.

02 Q. Uh-huh.

03 A. Have one model, a vocational truck  
 04 to an over-the-road truck, they just don't do  
 05 that anyway.

06 Q. A sleeper versus a day cab, that  
 07 would be a pretty significant change, wouldn't  
 08 it?

09 MR. PARKS: Objection. What change,

10 like to convert a sleeper into a day cab?

11 MR. HEEP: Well, I'm trying to  
12 figure out what Mr. Lusty's saying here in 4(b).

13 Q. Where it says, "Most alterations to  
14 Mack trucks to meet customer specifications are  
15 generally minor," and I'm -- I'm asking if the  
16 difference between a sleeper and a day cab is a  
17 specification that's generally minor.

18 A. Actually, we built that truck to  
19 make it a minor specification change. When you  
20 take a sleeper off, you remove an air bag  
21 suspension, put a little cross member in there,  
22 and they've got a back panel that's already  
23 prefabbed, and you spot weld that in and paint  
24 it and you're done. That's really a relatively  
00323:01 minor change.

02 Q. And the -- it would cause a  
03 difference in price, wouldn't it, for a dealer?

04 A. For a dealer to do that? I mean,  
05 are you talking about a new truck or something  
06 on a dealer's lot?

07 Q. Well, I mean, let's talk about new  
08 class 8 trucks.

09 A. Okay, new class 8 trucks. Sitting  
10 on a dealer lot or a factory order truck?

11 Q. Well, either way.

12 A. Well, it's nothing -- it's nothing  
13 to change the spec in a computer when you're  
14 ordering it. I mean, it's either going to have  
15 a sleeper or it's not.

16 Q. Right.

17 A. It could be a vocational truck. You  
18 could have two fuel tanks. You could have a  
19 clear frame rail, different transmissions.  
20 That's pretty -- it's minor to change in the  
21 computer. It's minor to build the truck from an  
22 order like that. I mean, people do that. We  
23 had -- there were periods of time when you could  
24 change an order, you know, a window of  
00324:01 opportunity to change orders.

02 Q. Right. But as you said earlier,  
03 those specifications changes, even though you're  
04 describing them as minor, will certainly cause  
05 price changes; right?

06 A. They could.

07 MR. PARKS: Objection.

08 Q. How about central tire inflation,  
09 would you call that a minor specification?

10 A. I'm not really familiar with that  
11 spec and even what it costs. I've never quoted  
12 a truck with that on it.

13 Q. How about brakes, changes in the  
14 break system?

15 A. Depends on what change.

**38. PAGE 324:17 TO 325:01 (RUNNING 00:00:29.000)**

17 Q. You agree, though, that having a  
18 different brake system would also cause the  
19 truck to be priced differently.

20 A. It could. I mean, depending on the  
21 spec, I guess. It depends on what you're

22 talking about. It could.

23 Q. In general, you agree with the  
24 general statement that changes to specifications  
00325:01 cause the truck to be priced differently.

**39. PAGE 325:04 TO 325:04 (RUNNING 00:00:01.100)**

04 A. It could.

**40. PAGE 329:12 TO 330:24 (RUNNING 00:01:48.200)**

12 Q. Look at page 8 under Bolus Trucking,  
13 Paragraph 49.

14 A. Okay.

15 Q. You say -- you explain the whole  
16 situation. You've given testimony about this  
17 before, too. And you say in the last sentence,  
18 "By that time, however, Triple Cities Mack had  
19 secured the deal."

20 Do you see at least where I am?

21 A. Uh-huh. Yeah.

22 Q. Okay. And your point is not that  
23 Toledo Mack was not equalized, right; your point  
24 is that there was a delay in equalization; is  
00330:01 that right?

02 A. No. My point there was Toledo Mack  
03 was not equalized at every step of the deal.  
04 There was a delay. There was a: "Fuck him, let  
05 him start at two and a half percent." And then  
06 it -- and then there was a question in that  
07 deal -- now, it's coming back.

08 There was a question of the  
09 surcharge, and I never could get all of the  
10 ingredients of that deal at one time from Frank  
11 Schriffert to give Dave Yeager all of the  
12 discount, terms, conditions up front so he could  
13 intelligently and professionally quote a deal to  
14 the customer. I did not have all the  
15 ingredients of the deal at any one given time.

16 Q. Well, you say at the end that he  
17 finally did reach the 8 percent plus \$2,400  
18 concessions level that had been in place for  
19 Triple Mack -- Triple Cities Mack from the  
20 outset; right?

21 A. Yes.

22 Q. So you're saying that it was -- that  
23 he did finally reach the level that Triple  
24 Cities Mack had; right?

**41. PAGE 334:07 TO 337:04 (RUNNING 00:02:17.100)**

07 A. Eventually they finally reached --  
08 it was my understanding with the information I  
09 had, they had reached the 8 percent plus the  
10 \$2,400 in concession level that had been in  
11 place for Triple Cities.

12 Q. (By Mr. Heep) Okay. And then you  
13 say, "By that time, however, Triple Cities Mack  
14 had secured the deal"; right?

15 A. Yes.

16 Q. Okay. So you're not saying --  
17 you're saying that Toledo Mack was equalized,  
18 but by the time it was, Triple Cities Mack had  
19 already secured the deal; right?

20 A. Yes.  
 21 Q. Okay. And how do you know that  
 22 Triple Cities Mack had secured the deal?  
 23 A. Frank Schriffert told me that Triple  
 24 Cities Mack secured the deal.  
 00335:01 Q. Okay. And -- and when did he tell  
 02 you that?  
 03 A. Oh, I can't remember that.  
 04 Q. Did he?  
 05 A. Did he -- how do I know that Triple  
 06 Cities Mack secured the deal?  
 07 Q. How do you know that Triple Cities  
 08 Mack secured the deal before Toledo Mack had an  
 09 opportunity to quote?  
 10 A. If I had all those documents, I  
 11 could walk you through that whole deal from the  
 12 beginning to the end and show you the delays, me  
 13 trying and going to get the discount.  
 14 If I don't -- if you're not  
 15 equalized on day one, you're at a disadvantage.  
 16 The first time you apply for our sales  
 17 assistance and you're not equalized, you're at a  
 18 disadvantage.  
 19 First of all, your credibility as a  
 20 Mack dealer, I believe, is at stake. That's my  
 21 opinion. And this went on, and it was back and  
 22 forth and it was piecemeal. The discount was  
 23 given X percent here and "Well, we don't know  
 24 about the surcharge because of these factors.  
 00336:01 " I can't remember, but it's in a  
 02 lot of notes in there, and I haven't looked at  
 03 this stuff for a long time, and so it's not  
 04 fresh in my mind, but when I gave my deposition,  
 05 I could talk about that.  
 06 Q. Okay. My only question is, how did  
 07 you know that Triple Cities Mack secured the  
 08 deal before Toledo Mack was equalized?  
 09 A. Frank Schriffert told me they  
 10 secured the deal.  
 11 Q. Before Toledo Mack got its sales  
 12 assistance?  
 13 A. I would have to look at my other  
 14 notes on that, Jeremy. I can't recall that.  
 15 Q. Okay. Sitting here you don't know?  
 16 A. What's that?  
 17 Q. Sitting here, without looking at the  
 18 notes, you don't know.  
 19 A. Yeah, I can't recall that.  
 20 Q. And did you ever talk to anyone  
 21 about Bolus -- at Bolus about this?  
 22 A. Did I ever speak to Bolus? No, I  
 23 never spoke to Bolus.  
 24 Q. Do you have any idea how Toledo  
 00337:01 Mack's pricing even before it was equalized  
 02 compared with Triple Mack's pricing, the price  
 03 that it offered Bolus?  
 04 A. I never saw the actual quotes.

**42. PAGE 337:07 TO 339:13 (RUNNING 00:02:45.000)**

07 In paragraph 51 you say that: At a  
 08 "fly-in" meeting of MTI district managers and

09 executives, I attended a lunch with Steve  
 10 Polzer. At the lunch during a conversation  
 11 between Steve and myself, the subject of Toledo  
 12 Mack's lawsuit against MTI came up. Steve told  
 13 me that he thought that MTI should just admit  
 14 its guilt and move on.

15 My first question is, when was this  
 16 fly-in meeting?

17 A. That fly-in was in Texas. It was in  
 18 Dallas at wherever the Sports World is. I can't  
 19 remember the complex. I think it was a  
 20 Radisson. It wasn't a Cabella's but it was -- I  
 21 think it's called Sports World in Dallas.

22 And Steve Polzer -- I just happened  
 23 to walk in --

24 MR. EPSTEIN: The question was when  
 00338:01 was this meeting.

02 THE WITNESS: Okay.

03 A. Yeah, I can't -- I don't know the  
 04 exact date, but it was -- it was my last --  
 05 whatever my record shows the last time I was in  
 06 Dallas with Mack Trucks at the sports deal.

07 Q. Was anyone else present when you say  
 08 that Steve Polzer made this statement?

09 A. Steve Polzer and I were standing up,  
 10 and Jeff Yelles was sitting -- actually, when we  
 11 ate, Jeff Yelles was sitting there, and there  
 12 was one other guy over there. I think it was  
 13 Bill Everly. But he wasn't involved in the  
 14 conversation.

15 Q. Do you have any understanding what  
 16 Steve meant when he said "admit its guilt and  
 17 move on"?

18 A. Yeah; about the Toledo Mack lawsuit,  
 19 price discrimination, the whole lawsuit, we  
 20 should just admit our guilt and move on and get  
 21 this thing behind us.

22 Q. Did -- did he say those words, or  
 23 did he just say "admit its guilt and move on"?

24 A. Admit its guilt and move on, and  
 00339:01 then another section there he says, "We need to  
 02 put this behind us." That is what I remember  
 03 him telling me at that very moment.

04 Q. Do you -- did you have a sense when  
 05 you were hearing these words of Steve he was  
 06 joking or being serious?

07 A. Oh, dead serious.

08 Q. Did you make any notes of this  
 09 conversation?

10 A. They're in one of my notes  
 11 somewhere.

12 Q. Sorry?

13 A. Those are in some of my notes.

**43. PAGE 360:22 TO 361:15 (RUNNING 00:01:03.100)**

22 Q. (By Mr. Heep) You're aware that  
 23 you've had many -- I'm sorry, not many -- you've  
 24 had at least four or five conversations that  
 00361:01 we're now aware of that Mr. Yeager recorded  
 02 telephonic conversations between you and him.

03 A. I'm aware that has taken place.



04 Q. Okay. Do you remember in the 2001  
05 time period Mr. Yeager telling you that he's  
06 been spending all of his time in parts and that  
07 he's now switching gears and getting into the  
08 truck aspect of things?

09 A. He told me something to that effect.

10 Q. Okay. When he told you that he has  
11 been spending all of his time in parts and he's  
12 now switching gears and getting into the truck  
13 aspect of things, what did you understand him to  
14 mean?

15 A. You mean the day --

**44. PAGE 361:22 TO 363:01 (RUNNING 00:01:11.800)**

22 Q. What did you understand Mr. Yeager  
23 to mean?

24 A. That Dave was involved in the part  
00362:01 department physically and that he -- I mean, he  
02 was riding herd back there. He was building the  
03 parts business. He was himself there. Mark was  
04 out front with trucks, and then David was going  
05 to get in and shake the truck sales up.

06 Q. Okay. You understood that as of  
07 this time period around 2001 that Dave Yeager  
08 started to engage himself personally, switched  
09 gears personally and personally getting involved  
10 in selling trucks at that point; is that right?

11 MR. PARKS: Objection, foundation.

12 MR. EPSTEIN: Join.

13 A. To personally sell trucks, yeah.

14 Q. Okay. And tell me, just to be  
15 clear, he was switching gears to do that, to use  
16 his words.

17 A. I don't know if I'd use "switching  
18 gears." If it's in there, I mean, he spent some  
19 time in the parts department. He built a parts  
20 business, a deep discount truck warehouse  
21 business, and he got that running smoothly. It  
22 was where he wanted it to be, and he was going  
23 to get involved personally and guide and direct  
24 truck sales along with Mark, who had been doing  
00363:01 it.

**45. PAGE 380:01 TO 380:04 (RUNNING 00:00:09.600)**

00380:01 Q. Was the Mack sales assistance  
02 process manipulated by Mack employees in order  
03 to steer deals away from certain Mack dealers  
04 and to other Mack dealers?

**46. PAGE 380:09 TO 380:09 (RUNNING 00:00:01.000)**

09 A. Yes.

**47. PAGE 381:05 TO 381:09 (RUNNING 00:00:10.700)**

05 Was one of the ways the sales  
06 assistance process at Mack was manipulated by  
07 Mack employees through delay in response to  
08 requests for sales assistance?

09 A. Yes.

**48. PAGE 381:16 TO 381:20 (RUNNING 00:00:11.000)**

16 Q. Was one of the ways the sales